

1 **Rule 1.17. Sale of Licensed Paralegal Practice.**

2 A licensed paralegal practitioner may sell or purchase a licensed paralegal practice, if the  
3 following conditions are satisfied:

4 (a) The seller ceases to engage in licensed paralegal practice in the geographic area in which  
5 the practice has been conducted;

6 (b) The entire practice is sold to one or more licensed paralegal practitioners;

7 (c) The seller gives written notice to each of the seller’s clients regarding:

8 (c)(1) the proposed sale and the identity of the purchaser;

9 (c)(2) the client’s right to retain other representation or to take possession of the file; and

10 (c)(3) the fact that the client’s consent to the transfer of the client’s files will be presumed if  
11 the client does not take any action or does not otherwise object within ninety (90) days of  
12 mailing of the notice; and

13 (d) The fees charged clients are not increased by reason of the sale.

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15 Comment

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17 [1] The practice of law is a profession, not merely a business. Clients are not  
18 commodities who can be purchased and sold at will. Pursuant to this Rule, when a licensed  
19 paralegal practitioner or an entire firm ceases to practice, or ceases to practice in an area of law,  
20 and other licensed paralegal practitioners or firms take over the representation, the selling  
21 licensed paralegal practitioner or firm may obtain compensation for the reasonable value of the  
22 practice as may withdrawing partners of law firms. See Rules 5.4 and 5.6.

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24 Notification

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26 In complying with this Rule, a seller must undertake reasonable steps in locating the clients who  
27 would be subject to the sale of the practice or area of practice. Typically, this would require  
28 attempts to contact the client at the last known address.

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30 Termination of Practice by the Seller

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32 [2] The requirement that all of the private practice be sold is satisfied if the seller in good faith  
33 makes the entire practice available for sale to the purchasers. The fact that a number of the  
34 seller's clients decide not to be represented by the purchasers but take their matters elsewhere,  
35 therefore, does not result in a violation. Return to private practice as a result of an unanticipated  
36 change in circumstances does not necessarily result in a violation.

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38 [3] The requirement that the seller cease to engage in the private practice of law in the  
39 geographic area does not prohibit employment as a licensed paralegal practitioner on the staff of  
40 a public agency or a legal services entity that provides legal services to the poor, or as in-house  
41 counsel to a business.

42 [4] The rule permits a sale of an entire practice attendant upon retirement from the private  
43 practice of law within the geographic area.

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45 Sale of Entire Practice or Entire Area of Practice

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47 [5] Reserved.

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49 [6] The rule requires that the seller's entire practice be sold. The prohibition against sale of less  
50 than an entire practice area protects those clients whose matters are less lucrative and who might  
51 find it difficult to secure other counsel if a sale could be limited to substantial fee-generating  
52 matters. The purchasers are required to undertake all client matters in the practice or practice  
53 area, subject to client consent. This requirement is satisfied, however, even if a purchaser is  
54 unable to undertake a particular client matter because of a conflict of interest.

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56 Client Confidences, Consent and Notice

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58 [7] Negotiations between seller and prospective purchaser prior to disclosure of information  
59 relating to a specific representation of an identifiable client no more violate the confidentiality  
60 provisions of Rule 1.6 than do preliminary discussions concerning the possible association of  
61 another licensed paralegal practitioner or mergers between firms, with respect to which client  
62 consent is not required. Providing the purchaser access to client-specific information relating to

63 the representation and to the file, however, requires client consent. The rule provides that before  
64 such information can be disclosed by the seller to the purchaser, the client must be given actual  
65 written notice of the contemplated sale.

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67 [8] Reserved.

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69 [9] All elements of client autonomy, including the client's absolute right to discharge a licensed  
70 paralegal practitioner and transfer the representation to another, survive the sale of the practice or  
71 area of practice.

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73 Fee Arrangements Between Client and Purchaser

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75 [10] The sale may not be financed by increases in fees charged the clients of the practice.  
76 Existing arrangements between the seller and the client as to fees and the scope of the work must  
77 be honored by the purchaser.

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79 Other Applicable Ethical Standards

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81 [11] Licensed paralegal practitioners participating in the sale of a law practice are subject to the  
82 ethical standards applicable to involving another licensed paralegal practitioner in the  
83 representation of a client. These include, for example, the seller's obligation to exercise  
84 competence in identifying a purchaser qualified to assume the practice and the purchaser's  
85 obligation to undertake the representation competently (see Rule 1.1); to charge reasonable fees  
86 (see Rule 1.5); to protect client confidences (see Rule 1.6); to avoid disqualifying conflicts and  
87 secure the client's informed consent for those conflicts for which there is agreement (see Rules  
88 1.7, 1.9 and Rule 1.0(f) for the definition of informed consent); to releases of liability (see Rule  
89 1.8(h)); and to withdrawal of representation (see Rule 1.16)).

90 [12] Reserved.

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92 Applicability of the Rule

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94 [13] This Rule applies to the sale of a licensed paralegal practice by representatives of a  
95 deceased, disabled or disappeared licensed paralegal practitioner. Thus, the seller may be  
96 represented by a nonparalegal practitioner representative not subject to these Rules. Since,  
97 however, no licensed paralegal practitioner may participate in a sale of a law practice which does  
98 not conform to the requirements of this Rule, the representatives of the seller as well as the  
99 purchasing licensed paralegal practitioner can be expected to see to it that they are met.

100

101 [14] Admission to or retirement from a licensed paralegal partnership or professional association,  
102 retirement plans and similar arrangements, and a sale of tangible assets of a practice, do not  
103 constitute a sale or purchase governed by this Rule.

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105 [15] This Rule does not apply to the transfers of legal representation between licensed paralegal  
106 practitioners when such transfers are unrelated to the sale of a practice or an area of practice.

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108 [15a] This Rule does not prohibit a licensed paralegal practitioner from selling an interest in a  
109 firm and thereafter continuing association with the firm or in an of-counsel capacity.

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111 [15b] Reserved.

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113 [15c] Section (c)(3) of Utah's Rule 1.7 of the Lawyer's Rules of Professional Conduct deviate  
114 from the ABA Model Rule by providing that the 90-day client objection period begins to run  
115 from the mailing of the notice rather than from receipt of the notice. The only practical way to  
116 prove receipt would be by commercial courier or certified/registered mail. Proving receipt of  
117 notice could therefore be cost-prohibitive, especially to the small sole practitioner. Often when a  
118 licensed paralegal practitioner does not have a viable address for a client, it is because the  
119 subject-matter of the representation has become stale or the client has failed to keep in touch  
120 with the licensed paralegal practitioner presumably due to a loss of interest in the matter. Both  
121 the Utah Rules of Civil Procedure and the Utah Rules of Criminal Procedure allow for notices to  
122 be given by regular U.S. mail at the last-known address for the client and provide a presumption  
123 of service upon deposit of the notice in the mail, postage pre-paid. There does not appear to be  
124 good reason to place a more onerous burden upon a licensed paralegal practitioner selling a

125 practice or area of practice. Whether the client received actual notice of the proposed sale of a  
126 practice or area of practice, the client is not abandoned; there is new counsel to protect the  
127 client's existing rights.